



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HJK Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This was a hearing with respect to an application by the tenant to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant called in and participated in the hearing with his wife who acted as his agent. The landlord's representative called in and participated in the hearing.

### Issue(s) to be Decided

Should the one month Notice to End Tenancy dated July 22, 2105 be cancelled?

### Background and Evidence

The rental property is a manufactured home park in A. The tenant owns a manufactured home on a site in the park. The tenant testified that his tenancy began in 1992, but it was not until 2002 that a tenancy agreement was created between the tenant and the former owner of the park. The tenancy agreement provided that rent is payable on or before the first day of each month.

The landlord purchased the manufactured home park from the former owners in October, 2014. The landlord gave the tenant a Notice of Rent Increase in January 2015. The increase was effective May 1, 2015 and raised the tenant's rent from \$546.00 per month to \$575.00 per month.

On July 22, 2015 the landlord served the tenant with a one month Notice to End Tenancy for cause. The Notice was sent to the tenant by registered mail. The Notice to End Tenancy allege that the tenant is repeatedly late paying rent.

The landlord's representative testified that the tenant was late paying rent on four occasions; the landlord referred to receipts issued by his site manager for cash rent

payments made by the tenant. He said that according to the receipts March rent was paid on March 2<sup>nd</sup>. Rent for April was paid on April 6<sup>th</sup> and May rent was paid on April 29<sup>th</sup>, save for the sum of \$29, being the amount of the rent increase which was paid on May 21<sup>st</sup>. The landlord said rent for July was paid on July 2<sup>nd</sup>. The rent has been paid on or before the first of each month since July.

The tenant testified that he has lived in his home in the park since 1992. His home has been modified and additions have been constructed. The home cannot be moved from the park. The tenant and his wife testified that it was the policy of the former landlord to regard rent as payable on the first business day of the month. The tenant said that over the lengthy tenancy the former landlord never made any objection with respect to late payment of rent. The tenant's wife noted that the landlord stated on his invoice to the tenant dated May 14, 2015 that:

PLEASE NOTE: ALL RENTAL PAYMENTS ARE DUE ON THE 1<sup>ST</sup> BUSINESS DAY OF EACH MONTH. PAYMENTS RECEIVED AFTER THE 5<sup>TH</sup> WILL BE CHARGED A LATE FEE OF \$25.00.

The landlord said in a submission that the statement on the invoice was a mistake and the provisions of the tenancy agreement should govern.

The tenant said that it was not until September 22, 2015 that the landlord sent a letter to all tenants and provided instructions to request that tenants who pay rent by cash should make the payment by direct deposit to the landlord at the landlord's nearby bank.

### Analysis

The Residential Tenancy Policy Guidelines contain provisions with respect to ending a tenancy when a tenant has been repeatedly late paying rent. The guideline provides as follows:

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

According to the landlord the tenant has been late on four occasions. The tenant's testimony is that over the course of this tenancy, which has lasted for more than 20 years, the landlord has considered rent to be received on time if it was received on the first business day of the month.

The landlord confirmed the tenant's understanding by the invoice dated May 14<sup>th</sup>. The landlord did not give the tenant notice that it was insisting on strict adherence to the tenancy agreement provision that rent be paid on or before the 1<sup>st</sup> of each month before he served the tenant with the Notice to End Tenancy on July 22, 2015. I find that the practice of accepting rent payments over the 20 year tenancy without strict adherence to the requirement that they be paid on the 1<sup>st</sup> of each month amounted to a waiver by the landlord of this requirement and I find that the landlord should not be permitted to rely on the tenant's late payments as grounds to end the tenancy without first notifying him that the requirement will henceforth be strictly enforced. I find that the landlord's misleading advice about when payments should be made, as stated in his own invoice, is a further reason for imposing the requirement of notice to the tenant before insisting on strict performance. I note that the landlord's remark about late fees, might lead tenants to assume that rent payments will not be considered to be late unless made after the 5<sup>th</sup> of the month.

### Conclusion

Based on my findings as stated, I allow the tenant's application and I order that the Notice to End Tenancy dated July 22, 2015 be, and is hereby cancelled. The tenancy

will continue until ended in accordance with the provisions of the *Manufactured Home Park Tenancy Act*. I make no award with respect to the filing fee for this application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: October 14, 2015

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Residential Tenancy Branch

